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COURT OF CRIMINAL APPEALS
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COURT OF CRIMINAL APPEALS
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IN THE COURT OF CRIMINAL APPEALS

OF TEXAS

STEVEN CURRY

APPELLANT

VS.

THE STATE OF TEXAS

APPELLEE

On Petition for Discretionary Review from

The First Court of Appeals

in No. 01-17-00421-CR Affirming

The 263rd Criminal District Court of

Harris County, Texas, Cause No. 1528845,

Honorable Jim Wallace, Judge Presiding

APPELLANT'S BRIEF ON DISCRETIONARY REVIEW

Crespin Michael Linton
440 Louisiana, Suite 900
Houston, Texas 77002
Texas Bar No. 12392850
(713) 236-1319
(713) 236-1242 (Fax)
crespin@hal-pc.org
Counsel For Appellant

IDENTIFICATION OF THE PARTIES

Pursuant to TEX. R. APP. P. 38.1 (a), the following are interested parties:

Presiding Judge:	Jim Wallace 263rd District Court 111 E. Locust, 3rd Floor Angleton, Texas 77515
Appellant:	Mr. Steven Curry 11719 Milam Drive La Porte, Texas 77571
Attorneys for State:	Mr. Daniel McCrory Harris County District Attorney's Office 1201 Franklin Houston, Texas 77002
Attorneys for Appellant:	Mr. Carl Haggard (trial) 8614 Hemlock Hill Drive Houston, Texas 77083
	Mr. Crespin Michael Linton (appeal) 440 Louisiana Street, Suite 900 Houston, Texas 77002

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STATEMENT OF THE CASE

Appellant was indicted for the charge of Accident Involving Injury - Failure To Stop And Render Aid for killing a bicyclist with his vehicle and then leaving the scene of the accident on March 20, 2015 in La Porte, Harris County, Texas. Appellant contends that the appellate court incorrectly held that the evidence was sufficient to convict him for the felony of Accident Involving Injury – Failure To Stop And Render Aid. Appellant asserts that the State failed to produce beyond a reasonable doubt evidence that he knew that he was involved in an accident that could have caused injury to a person instead of his reasonable belief that an unknown person caused the vehicle's damage by throwing a beer bottle at his vehicle.

Appellant also contends that the appellate court incorrectly affirmed the trial court's refusal to give a jury instruction on the defense of Mistake of Fact. Appellant argues that he and his girlfriend's testimony that an unknown assailant threw a beer bottle at his vehicle instead of him being involved in an accident that killed a bicyclist negated the required culpable mental state required for the charge and thus warranted the submission of this jury issue.

On April 4, 2017, a jury found Appellant Curry guilty of Accident Involving Injury – Failure To Stop And Render Aid and assessed a sentence of 6 years in the Texas Department of Criminal Justice. The First Court of Appeals affirmed in a published opinion on May 8, 2018.

STATEMENT OF THE PROCEDURAL HISTORY

This Court granted discretionary review on December 12, 2018 and granted an extension of time to file Appellant's Brief until January 28, 2019.

GROUNDS FOR REVIEW

1. The Court of Appeals erred in determining that the evidence was sufficient to support Appellant's conviction for Accident Involving Injury – Failure To Stop And Render Aid.

2. The Court of Appeals erred in affirming the trial court's refusal to give a jury instruction on Mistake Of Fact.

SUMMARY OF THE ARGUMENT- FIRST GROUND FOR REVIEW

The Court of Appeals erred in determining that the evidence supported a conviction for failing to stop and render aid even if Appellant reasonably believed that the damage to his vehicle resulted from a beer bottle thrown by an unknown assailant and not from him hitting a bicyclist because the court considered the collision of a bottle with his vehicle as an "accident" for the purposes of Section 550.021 of the Texas Transportation Code.

ARGUMENTS AND AUTHORITIES

The Court of Appeals incorrectly held that the evidence was sufficient to convict Appellant of Accident Involving Injury – Failure To Stop And Render Aid.

The test for reviewing the insufficiency of the evidence where a defendant has been found guilty is for the reviewing court to determine whether, after viewing the relevant evidence in the light most favorable to the verdict, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. **Brooks v. State**, 323 S.W.3d 893 (Tex. Crim. App. 2010)

Section 550.023 of the **Texas Transportation Code** provides that a person commits the felony offense of Accident Involving Injury – Failure To Stop And Render Aid if the operator of a vehicle involved in an accident that results or is reasonably likely to result in injury or death of a person fails to: 1) immediately stop the vehicle at the scene of the accident or as close to the scene as possible, 2) immediately return to the scene of the accident if the vehicle is not stopped at the scene of the accident, 3) immediately determine whether a person is involved in the accident, whether that person requires aid, and 4) remain at the scene of the accident until the operator complies with the requirements of

Section 550.023. (West 2017) The State must prove that the driver knew that an accident occurred. **Huffman v. State**, 267 S.W.3d 902, 908 (Tex. Crim. App. 2008).

While the Court of Appeals correctly acknowledged that the term "accident" was not statutorily defined, the Court of Appeals ruled that the New Oxford American Dictionary's definition of accident as an unfortunate incident that typically results in damage or injury would apply in this case. The Court of Appeals erred in its analysis by determining that the State proved Appellant was involved in an accident beyond a reasonable doubt even when viewing the following evidence in the light most favorable to the verdict by supporting the verdict with a dictionary's definition of the term accident that the jury did not have in the jury charge. Both Appellant and his girlfriend testified that they did not believe that Appellant hit a bicyclist but instead believed that someone standing near the road threw a beer bottle at Appellant's truck which caused the truck's minor damage.

The Court of Appeals further erred by incorrectly determining that Appellant's collision constituted an accident by citing three cases that held that the Appellant was determined to be involved in an accident under this statute even though none of them had collided with the victim

in any of the cases. **See Steen v. State,** 640 S.W.2d 912, 914 (Tex. Crim. App. 1982); **Sheldon v. State**, 100 S.W.3d 497, 500 (Tex. App. – Austin 2003, pet. ref'd); **Rivas v. State**, 787 S.W.2d 113, 114 (Tex. App. – Dallas 1990, no. pet.)

Appellant argues that none of these 3 cases apply to the current case. First, in **Steen**, the defendant pleaded "nolo contendere" to charge and allowed the trial court to sentence him. Moreover, one of the witnesses in **Steen** testified that he saw the defendant look at the collision of the vehicles that resulted from the defendant's negligent driving. So, in **Steen**, the State presented evidence that the defendant's driving caused the deadly accident even though the defendant's vehicle never collided with another vehicle. In **Curry**, the State never presented a witness who testified that Appellant saw the deceased being hit by his vehicle.

Second and lastly, in **Sheldon** and **Rivas**, passengers in both vehicles driven by the defendant jumped to their death without the defendants stopping their vehicles to aid the passengers. In both cases, witnesses testified that the defendants knew that their passengers jumped from the moving vehicles.

Unlike these 3 cases, Appellant testified that his truck collided with something, but he believed it was a beer bottle throw by a bystander not a bicyclist. In addition, both he and his girlfriend testified that they were scared to exit their vehicles to investigate the collision at night with the possibility of confronting a drunk person throwing beer bottles at passing traffic. Therefore, the Court of Appeals erred in determining that the evidence was sufficient to convict Appellant of Accident Involving Injury – Failure To Stop And Render Aid.

SUMMARY OF THE ARGUMENT – SECOND GROUND FOR REVIEW

The Court of Appeals erred in affirming the trial court's refusal to give a jury instruction on Mistake of Fact because the court erroneously reasoned that any collision of an object with a vehicle, even if it is a beer bottle thrown by an unknown assailant at night, constitutes an "accident" within the meaning of Section 550.021 of the Texas Transportation Code.

ARGUMENTS AND AUTHORITIES

An accused has the right to an instruction on any defensive issue raised by the evidence, whether the evidence is weak or strong, unimpeached or contradicted, and regardless of what the trial court may think about the credibility of the defense. **Granger v. State**, 3 S.W.3d 36, 38 (Tex. Crim. App. 1999)

Section 8.02 of the Texas Penal Code provides that it is a defense to prosecution that an actor through mistake formed a reasonable belief about a matter of fact if his mistaken belief negated the kind of culpability required for commission of the offense. **Tex. Pen. Code, Section 8.02(a) (West 2018)** "To raise the defensive issue of mistake of fact, there must be evidence which negates the culpable mental state, i.e., intentionally and knowingly, required for the offense." **Plummer v.**

State, 426 S.W.3d 122, 127 (Tex. App. – Houston [1st Dist.] 2012, pet. ref'd)

The Court of Appeals incorrectly stated that Appellant argued that he was under the mistaken belief that he had hit a person when instead Appellant argued that he was under the mistaken belief that he had been involved in an accident in the first place. While Appellant did testify that he did not believe that he had hit a bicyclist, he clearly testified that he did not believe that he had been involved in an accident which required him to stop and investigate because he reasonably believed that the damage to his vehicle was caused by a beer bottle thrown by an unknown assailant. Appellant's testimony was supported by the testimony of his girlfriend. Because there was a conflicting evidence that he had been involved in an accident, the Court of Appeals erred in refusing to reverse the trial court's decision to deny submitting this defensive issue of Mistake of Fact to the jury. Appellant's mistaken belief that a beer bottle hit his truck negated the culpable mental state required by Section 550.023 of the Texas Transportation Code.

Appellant contends that the appellate court erred in siding with the trial court by preventing a jury from deciding whether Appellant's had a

mistaken belief of fact about whether or not he had been involved in an accident. Therefore, the Court of Appeals erred in determining that there was no affirmative evidence to support the submission of the defensive charge of Mistake of Fact.

PRAYER FOR RELIEF

Appellant prays that the decision of the First Court of Appeals be reversed, and the cause remanded to that court for further proceedings not inconsistent with this Court's opinion.

Respectfully submitted,

/s/ Crespin Michael Linton
Crespin Michael Linton
440 Louisiana, Suite 900
Houston, Texas 77002
Texas Bar No. 12392850
(713) 236-1319
(713) 236-1242 (Fax)
crespin@hal-pc.org

CERTIFICATE OF COMPLIANCE

I hereby certify that Appellant's Brief, as calculated under Texas Appellate Rule of Appellate Procedure 9.4, contains 2,114 words as determined by the Word program used to prepare this document.

/s/ Crespin Michael Linton
Crespin Michael Linton

CERTIFICATE OF SERVICE

I do hereby certify that on this the 28th day of January 2019, a true and correct copy of the foregoing Appellant's Brief was served by E-service in compliance with Local Rule 4 of the Court of Appeals or was served in compliance with Article 9.5 of the Rules of Appellate Procedure delivered to the Assistant District Attorney of Harris County, Texas, 1201 Franklin, Suite 600 Houston, TX 77002 at mccrory_daniel@dao.hctx.net. and the State Prosecuting Attorney, P.O. Box 12405 Austin, Texas 78711 at information@spa.texas.gov.

/s/ Crespin Michael Linton
Crespin Michael Linton